

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

TERRY NICOLELLIS,

Plaintiff,

-against-

PROFESSIONAL CLAIMS BUREAU, INC.

Defendant(s).

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

**AUG 03 2010**

**BROOKLYN OFFICE:**

**CV 10 -**

**COMPLAINT**

**3549**

**DEMAND FOR JURY TRIAL**

**BIANCO, J.**

Plaintiff TERRY NICOLELLIS ("Plaintiff") , by and through her attorneys, M. Harvey

Rephen & Associates, P.C., as and for its Complaint against the Defendant

PROFESSIONAL CLAIMS BUREAU, INC ("PCB") hereinafter referred to as

**TOMLINSON, M.J.**

Defendant(s)"), respectfully sets forth, complains and alleges, upon information and belief,

the following:

**INTRODUCTION/PRELIMINARY STATEMENT**

1. Plaintiff brings this action on his own behalf for damages and declaratory and injunctive relief arising from the Defendant's violation(s) of §1692 et seq. of Title 15 of the United States Code, commonly referred to as the Fair Debt Collections Practices Act ("FDCPA"), and New York General Business Law §349 prohibiting unfair and deceptive practices.

**PARTIES**

2. Plaintiff is a resident of the State of New York, with a residence at 777 South Walnut St., Lindenhurst, N.Y. 11757-5650.
3. PBI is company with an office at 439 Oak St., Garden City, NY 11530.
4. PBI is a "debt collector" as the phrase is defined and used in the FDCPA

under 15 USC §1692a(6).

### **JURISDICTION AND VENUE**

5. The Court has jurisdiction over this matter pursuant to 28 USC §1331, as well as 15 USC §1692 et seq. and 28 U.S.C. §2201. If applicable, the Court also has pendent jurisdiction over the state law claims in this action pursuant to 28 U.S.C. §1367(a).

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

### **FACTUAL ALLEGATIONS**

7. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "6" herein with the same force and effect as if the same were set forth at length herein.

8. On information and belief, Defendant, on behalf of a third-party, began collecting an alleged consumer debt from the Plaintiff.

9. The Defendant on April 12th, 2010 called the Plaintiff and left a message on his telephone answering machine.

10. The Plaintiff having arrived at his residence with his wife and friends checked his messages on speaker phone in the presence of Bill Hart, Scott Baratta, Chris Cook and his wife Heidi Nicolellis.

11. The Defendant's Message was the following:" Hi Good morning. This message is for Terry Nicolellis. This is Dave McKensy from Professional Claims Bureau calling on behalf of Good Samaritan Hospital. Please be advised that this call is an attempt to collect a debt and any information obtained will be used for that purpose. Please call me back at 516.681.1122 extension 8215 in reference 6109243. I look forward to helping you

resolve this matter. Have a great day."

12. The Defendant's Message was heard by the Plaintiff and Heidi Nicolellis, Scott Baratta, Bill Hart and Chris Cook and thereby revealing that the Defendant was attempting to collect a debt from the Plaintiff.

13. The Defendant's Message violated 15 USC §1692c(b) prohibiting 3<sup>rd</sup> party disclosure.

14. As a result the Plaintiff's rights have been harmed by the Defendant.

**FIRST CAUSE OF ACTION**  
***(Violations of the FDCPA)***

15. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "14" herein with the same force and effect as if the same were set forth at length herein.

16. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 USC §1692c(b).

17. As a result of Defendant's violations of the FDCPA, Plaintiff and Class have been damaged and are entitled to damages in accordance with the FDCPA.

**DEMAND FOR TRIAL BY JURY**

18. Plaintiff TERRY NICOLELLIS hereby respectfully requests a trial by jury for all claims and issues in its Complaint to which it is or may be entitled to a jury trial.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, TERRY NICOLELLIS on its behalf and on behalf of the members of the Class, demands judgment from the Defendant COMPUTER CREDIT, INC. as follows:

- A. For actual damages provided and pursuant to 15 USC §1692k(a)(1);
- B. For statutory damages provided and pursuant to 15 USC §1692k(2)(A);
- C. For statutory damages provided and pursuant to 15 USC §1692k(2)(B);
- D. For attorneys' fees and costs provided and pursuant to 15 USC §1692k(a)(3);
- E. A declaration that the Defendant's practices violated the FDCPA;
- F. For any such other and further relief, as well as further costs, expenses and disbursements of this action, as this Court may deem just and proper.

Dated: New York, New York  
July 30<sup>th</sup>, 2010

Respectfully submitted,

By:   
M. Harvey Rephen, (MR3384), Esq.  
M. HARVEY REPHEN & ASSOCIATES, P.C.  
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New York, New York 10017  
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*Attorney for the Plaintiff TERRY NICOLELLIS*

To: PCB  
439 Oak St.  
Garden City, N.Y. 11530

*(Via Prescribed Service)*

Clerk,  
United States District Court, Eastern of New York  
*(For Filing Purposes)*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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COMPLAINT

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